



Office of the General Counsel

B-281022

September 28, 1998

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Federal Communications Commission: Implementation of Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "Implementation of Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses" (MM Docket No. 97-234, GC Docket No. 92-52, and GEN Docket No. 90-264; FCC 98-194). We received the rule on August 27, 1998. It was published in the Federal Register as a final rule on September 11, 1998. 63 Fed. Reg. 48615.

The final rule adopts procedures for auctioning pending and future mutually exclusive applications for construction permits in the various commercial broadcast services and determines that competing Instructional Television Fixed Service applications are subject to auction. It also adopts procedures for resolving pending broadcast comparative renewal cases, in which the FCC is not authorized to use auctions. Finally, the rule adopts a tiered "new entrant" bidding credit for entities with controlling interests in either no, or less than four, other media entities.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Federal Communications Commission is Judy England-Joseph, Director for Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Kathleen Fagan
AMD-Performance Evaluation and
Records Management
Federal Communications Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"IMPLEMENTATION OF COMPETITIVE BIDDING FOR COMMERCIAL
BROADCAST AND INSTRUCTIONAL TELEVISION FIXED SERVICE LICENSES"
(MM Docket No. 97-234, GC Docket No. 92-52, and
GEN Docket No. 90-264; FCC 98-194)

(i) Cost-benefit analysis

The FCC, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The FCC prepared an Initial Regulatory Flexibility Analysis in connection with the proposed rulemaking. In the preamble to the final rule, the Final Regulatory Flexibility Analysis, which complies with the requirements of the Act, is published.

The Final Analysis describes the need for and the objectives of the final rule, a description and estimate of the number of small entities to which the rule will apply, the steps taken to minimize the burden on small entities, and the alternatives considered.

The final rule does not make a final determination regarding bidding credits or other special measures to enhance participation by certain entities, including small businesses, because of the insufficiency of the current record. However, the rule adopts a tiered new entrant bidding credit for entities with controlling interests in either no, or less than four, other media entities so as to enhance participation by small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to title II of the Unfunded Mandates Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained in 5 U.S.C. 553. On December 12, 1997, a Notice of Proposed Rulemaking was published in the Federal Register and comments solicited. 62 Fed. Reg. 65392. Comments were received from 142 parties and reply comments from 57 parties. The comments are responded to in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Notice of Proposed Rulemaking (NPRM) requested comments on information collections which were subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The preamble to the NPRM contained the information required by the Paperwork Reduction Act, including the need and use of the information and the estimated annual burden hours. The collection was approved by OMB prior to the issuance of the final rule.

Statutory authorization for the rule

The final rule was issued pursuant to the authority of Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l), and 403.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.